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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC 02 225 64564

Office: MIAMI

Date: OCT 30 2008

IN RE: Applicant: [REDACTED]

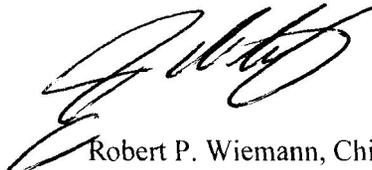
APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On October 13, 2006, the Director, Miami, denied the application for permanent resident status under the Legal Immigration Family Equity (LIFE). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to submit credible documents to establish, by a preponderance of the evidence, that he took up residence in the United States prior to January 1, 1982, and that he resided continuously here in an unlawful status from January 1, 1982, through May 4, 1988. The director stated that because of the applicant's conflicting claims under oath and the lack of documentation, the applicant failed to establish eligibility for the benefit sought.

Counsel for the applicant asserts that the evidence the applicant submitted with his Form I-687, Application for Status as a Temporary Resident, establishes his physical presence prior to January 1, 1982. Counsel asserts that the director did not specify what conflicting statements the applicant made.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. See § 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b). The applicant has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). See 8 C.F.R. § 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant's whereabouts during the relevant time period are given greater weight that fill-in-the-blank affidavits providing generic information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

A LIFE Legalization applicant must also provide evidence establishing that, before October 1, 2000, he or she was a class member applicant in a legalization class-action lawsuit. See 8 C.F.R. § 245a.14. In this case, the record reflects that the applicant applied for such class membership by submitting a "Form for Determination of Class Membership in *CSS v. Meese* [CSS lawsuit]," accompanied by a Form I-687 "Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act)," dated November 28, 1990.

On May 13, 2002, the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 3, 2004, the applicant appeared for an interview based on the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden, establishing by a preponderance of the evidence, that his claim of entry into the United States before January 1, 1982, and continuous residence in the United States during the requisite period is probably true. Although counsel is correct that the director did not specify what conflicting statements the applicant made, upon examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet his burden of proving eligibility and the evidence will be addressed, in full, by the AAO.

The applicant has provided the following documents relating to the requisite period:

Letters and affidavits

- Two "Affidavit of Residence" forms notarized in January and April 1990. The form, signed by [REDACTED] and [REDACTED], allows the affiant to fill in

an address where he or she lived with the applicant and the dates the applicant lived there. Mr. [REDACTED] indicates that the applicant lived with him in Queens, New York, from August 23, 1983, to November 16, 1987. Mr. [REDACTED] indicates that the applicant lived with him in Woodside, New York, from February 10, 1988 to the date of the affidavit. The form language states that “the rent receipts and household bills are in my name and the applicant contributes toward the payment of the rent and household bills.” Mr. [REDACTED] and Mr. [REDACTED] do not indicate personal knowledge of the applicant’s entry into the United States, and do not explain how, where, when, or under what circumstances they met the applicant. While they each state that they lived with the applicant for several years, they do not provide details that would indicate personal knowledge of the applicant’s place of residence or details about the circumstances of his residence in the United States during the statutory period. Furthermore, there is no evidence in the record that the affiants resided at the addresses listed as claimed. Lacking such relevant details, these affidavits can be given minimal weight as evidence of the applicant’s continuous residence during the requisite period;

- Four “Affidavit of Witness” forms, all notarized in May 1990. The form, signed by [REDACTED], and [REDACTED], indicates that the affiant has personal knowledge that the applicant resided in the United States at three addresses in Manhattan, Queens, and Woodside, New York, from May 1981 to date of the affidavit. The form allows the affiant to fill in a statement that he or she “is able to determine the date of the beginning of his or her acquaintance with the applicant in the United States from the following fact(s): ____.” Mr. [REDACTED] added: “We know each other because we worked in the same company since 1981.” Mr. [REDACTED] added: “We know each other since 1981 because we were working a part time.” Ms. [REDACTED] added: “We know each other since 1981, by a friend in a party.” Ms. [REDACTED] added: “We know each other since 1981 because we worked together.”

These affidavits, prepared on duplicate fill-in-the-blank forms, contain minimal details regarding any relationship with the applicant during the requisite period and fail to even state the dates when the affiants and the applicant met. Although the addresses the affiants provide are generally consistent with information provided by the applicant on his Form I-687, the affiants fail to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of his residence other than his addresses. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements;

- Three fill-in-the-blank affidavits notarized on August 19, 1991. The form, signed by [REDACTED], and [REDACTED], allows the affiant to fill in

a date when the applicant left the United States, the country where he went, and a date when he returned to the United States. Although all three affiants indicate that the applicant left the United States on November 16, 1987, to visit Mexico, and returned on December 27, 1987, none of them appear to have any personal knowledge of when the applicant left, how many times he left, or how long he was gone for. In addition, these affidavits, while possibly confirming the applicant's absence in 1987, have limited relevance as evidence of his residence in the United States during the requisite period;

- A letter dated October 20, 1989, signed by [REDACTED], general manager of A. Angonoa, Inc. Mr. [REDACTED] states that the applicant worked as an assistant worker from the summer of 1981 until April 1987. He states that the applicant was a very conscientious worker and was well liked by his fellow workers. This letter can be given little evidentiary weight because it lacks sufficient detail and information required by the regulations. Specifically, Mr. [REDACTED] failed to provide the applicant's address at the time of his employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, he also failed to declare which records the information was taken from, to identify the location of such records, and to state whether such records are accessible, or, in the alternative state the reason why such records are unavailable. In addition, the letter listed the applicant's position but did not list his duties with the company. Lacking such relevant details, this letter can be given minimal weight as evidence of the applicant's continuous residence during the requisite period;
- A letter dated November 28, 1990, signed by [REDACTED]. Dr. [REDACTED] states that the applicant has been a patient of his since 1981 and that he seeks his medical advice twice a year. He provides the applicant's address at the time the letter was dated. While Dr. [REDACTED] attests that the applicant was a patient of his, he does not state when the applicant came to the doctor's office or what treatment the doctor provided him. Lacking such relevant details, this affidavit can only be given minimal weight as evidence of the applicant's continuous residence during the requisite period; and,

Furthermore, the letter is not supported by copies of contemporaneous records. Given this lack of detail and authentication, the letter can be given minimal weight as evidence of the applicant's continuous residence or physical presence in the United States during the requisite period.

- A letter dated June 20, 1990, signed by [REDACTED] from the Calvary Methodist Church in the Bronx, New York. Pastor [REDACTED] states that the applicant has been a member of the church since 1981. He states that he is "pleased to vouch for him and to recommend him as a good, honest, and hard-working person." This letter can be given little evidentiary weight and has

little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not explain the origin of the information given, nor does it provide the address where the applicant resided during the period of his involvement with the church. Furthermore, Pastor [REDACTED] states that the applicant has been a member of the, but does not indicate how frequently he attended church and what church records were verified to corroborate his dates of membership.

For the reasons noted above, these letters and affidavits are not sufficient to establish the applicant's residence and presence in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. Furthermore, while the applicant has submitted numerous affidavits in support of his application, he has not submitted any credible, contemporaneous evidence to establish continuous his residence.

The record of proceedings contains other documents, including utility bills dated in 1991, tax documents from 1992 to 1993. These documents all indicate physical presence after May 4, 1988, and do not address the applicant's qualifying residence or physical presence during the eligibility period in question, specifically from before January 1, 1982, through May 4, 1988.

The remaining evidence in the record is comprised of the applicant's statements and application forms. The applicant's statements regarding his initial date of entry have been inconsistent. On his Form I-687, he claims to have entered the United States on May 12, 1981. In a sworn statement dated July 26, 2004, the applicant indicates that he first came to the United States in November 1981. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has made no attempt to explain or reconcile the inconsistent statements he has made regarding his initial date of entry and has not submitted evidence pointing to where the truth lies. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. The applicant has failed to do so.

Having examined each piece of evidence, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has not shown by a preponderance of the evidence he entered into the United States before January 1, 1982, and that he resided continuously in an unlawful status for the requisite period.

Pursuant to 8 C.F.R. § 245a.12(e), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance on affidavits, which lack relevant details, and the lack of any probative evidence of his entry and residence in the United States from prior to January 1, 1982

through May 4, 1988, the applicant has failed to establish by a preponderance of the evidence that he maintained continuous, unlawful residence in the United States as required for eligibility for adjustment to permanent resident status under section 1104(c)(2)(B)(i) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.